REMARKS

Reconsideration of this patent application is respectfully requested.

Claims 1-20 are currently pending in the application. Claims 1-20 are subject to a restriction requirement between the following Groups of claims:

Group I Claims 1-4 and 19 drawn to a nucleic acid, classified in Class 536, Subclass 23.5

Group II Claims 5-8 and 20 drawn to a polypeptide, classified in Class 530, subclass 350.

Group III Claims 9-10 and 18 drawn to an antibody to the polypeptide and a method of detecting the polypeptide, classified in Class 530, subclass 387.1.

Group IV Claims 11 and 13 (in part) and 16 drawn to a method of modulating expression of a molecule, classified in Class 435, subclass 7.2.

Group V Claims 12 and 13 (in part) and 15 drawn to a method of modulating activity of a molecule, classified in Class 435, subclass 7.2.

Group VI Claim 14 drawn to a method of treating by administration of a polypeptide, classified in Class 514, subclass 2.

Group VII Claim 17 drawn to a composition that modulates the expression or activity of a molecule, classified in Class 514, subclass 1.

The Examiner argues that restriction is proper because the products and methods described in the claims constitute patentably distinct inventions.

In response Applicants hereby provisionally elect, with traverse, the Group I claims 1-4 and 19.

With respect to Groups I-III, the Examiner asserts that the inventions are patentably distinct as the claims are directed to products that are distinct both physically and functionally and are not required, one for the other. Applicants submit that the claimed nucleic acid molecules and their expression products are structurally and functionally similar, as defined in the specification at Page 19, lines89-12 wherein it is stated that "similarity" includes exact identity between compared sequences at the nucleotide level, as well as "...differences between sequences which may encode different amino acids ... are nevertheless related to each other at the structural,

functional, biochemical and/or conformational levels." Thus, the inventions are not patentably distinct and would not impose an undue burden upon the Examiner to search and examine in a single application.

Further, the Examiner asserts that within group I, restriction to one gene within the nucleic acids identified as SEQ ID NO: 1, 2, 3 (which encodes the polypeptide of SEQ ID No: 4), 5, 6, 7, 8, and 9 is necessary as the claims encompass several structurally unrelated genes.

In response, Applicants hereby provisionally elect, with traverse, SEQ ID No. 1.

According to the Official Gazette Notice of October 17, 1996, *Examination of Patent Applications Containing Nucleotide Sequences*, "...up to ten (10) independent and distinct nucleotide sequences will be examined in a single application without restriction."

> " normally ten sequences constitute a reasonable number for examination purposes. The PTO believes that allowing applicants to claim up to ten (10) independent and distinct nucleotide sequences in a single application will promote efficient, cost-effective examination of these types of applications."

Applicants submit that since Group I contains less than ten nucleotide sequences, there is not an undue burden upon the Examiner for search and examination purposes, and restriction is not required.

Applicants reserve the right to file a continuing application or take such other appropriate action as is necessary to preserve the non-elected inventions. Applicants do not hereby waive or abandon any rights in the non-elected inventions.

Conclusion

In view of the foregoing remarks, Applicants respectfully request reconsideration and examination as to the merits of the application.

It is believed that no fees are due in this matter; however, in the event any fees are due in connection with the filing of this document, the Commissioner is authorized to charge those fees to our Deposit Account No.502679.

Respectfully submitted,
THE MCCALLUM LAW FIRM, LLC.

By: _____

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